

May 5, 2023

Loomis Sayles Trust Company, LLC v. Citigroup Global Markets Inc., No. 22-cv-6706-LGS

Dear Judge Schofield:

Plaintiff Loomis Sayles Trust Company, LLC (“LSTC” or “Plaintiff”) and Defendant Citigroup Global Markets Inc. (“CGMI” or “Defendant”) (collectively, “the Parties”) jointly submit this status letter, as ordered by Your Honor on March 13, 2023. (Dkt. 74.) Pursuant to Your Honor’s Individual Rule III.D.3, the Parties report as follows:

A. Discovery To Date

On October 14, 2022, the Parties served their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A).

On October 18, 2022, LSTC served its First Set of Requests for Production (“LSTC’s First RFPs”) on CGMI. On November 17, 2022, CGMI served its Responses and Objections to LSTC’s First RFPs. On January 17, 2023, LSTC served its Second Set of Requests for Production on CGMI (“LSTC’s Second RFPs”). CGMI served its Responses and Objections to LSTC’s Second RFPs on February 16, 2023.

On October 31, 2022, CGMI served its First Set of Requests for Production (“CGMI’s RFPs”) on LSTC. On November 30, LSTC served its Responses and Objections to CGMI’s RFPs.

On November 18, 2022, CGMI served on Loomis, Sayles & Company, L.P. (“Loomis”) a subpoena pursuant to Federal Rule of Civil Procedure 45 (the “Loomis Subpoena”).¹ Loomis served its written response to the subpoena on December 2, 2022. The Parties subsequently agreed that to avoid duplicative productions from Loomis and LSTC, Loomis would produce documents responsive to the subpoena, and LSTC would produce any unique documents that are responsive to CGMI’s RFPs and that have not been and would not be produced by Loomis.

On March 2 and 3, 2023, CGMI served document and testimony subpoenas on 16 absent class members (the “Absent Class Member Subpoenas”). The Absent Class Member Subpoenas sought, *inter alia*, categories of documents that were not requested from Loomis in the Loomis Subpoena. In connection with the Court’s Order denying Plaintiff’s request for a protective order as to the Absent Class Member Subpoenas (Dkt. 73) and to minimize the burden on the 16 absent class members, Loomis agreed to conduct a supplemental collection and review for communications in its possession responsive to the Absent Class Member Subpoenas. As to the categories of documents uniquely in the possession of the absent class members, CGMI proceeded with the Absent Class Member Subpoenas.

¹ Loomis is the sole member of LSTC.

To date, LSTC and Loomis have produced a total of 84,435 pages in 5,897 documents (LS-CITI 0000001–LS-CITI 0000065 and LSLP-CITI 0000001–LSLP-CITI 0084370) across nine productions in response to CGMI’s RFPs and the Loomis Subpoena on November 18, 2022, December 30, 2022, January 22, 2023, January 27, 2023, February 17, 2023, March 8, 2023, March 27, 2023, April 15, 2023, and April 26, 2023, and one production in response to the Absent Class Member Subpoenas on April 21, 2023. Further, on April 14, 2023, counsel for Loomis and LSTC notified CGMI of a recently discovered technical issue with the manner in which communications were collected from Loomis’s client relationship management system (“CRM”). The CRM contained data in a manner that could not be captured by electronic collection (*e.g.*, documents maintained as links to other Loomis systems). Upon learning of this issue, Loomis manually retrieved documents that were not captured by its original electronic collection from the CRM. Loomis completed its production of additional responsive documents that resulted from this process on April 26, 2023. Many of the documents contained in the April 26 production were also produced to CGMI on April 21 in connection with the Absent Class Member Subpoenas.

CGMI has produced 36,264 pages in 3,269 documents (CGMI_00000001–CGMI_00036264) across seven productions on November 18, 2022, January 5, 2023, February 2, 2023, February 17, 2023, March 3, 2023, March 8, 2023, and March 29, 2023. The Parties do not expect to make any further productions at this time.

On January 31, 2023, LSTC served its First Set of Requests for Admission and its First Set of Interrogatories on CGMI, and CGMI served its First Set of Requests for Admission to LSTC. The Parties responded to the foregoing discovery requests on March 2, 2023. On March 1, 2023, LSTC served its Second Set of Interrogatories on CGMI. CGMI served its Responses and Objections to LSTC’s Second Set of Interrogatories on April 10, 2023.

The Parties have engaged in additional third-party discovery, with both LSTC and CGMI serving document and testimony subpoenas on Citadel Securities LLC (“Citadel”) and the New York Stock Exchange (“NYSE”). The Parties understand that both Citadel and NYSE have completed their productions. The Parties took the deposition of Citadel on April 20, 2023.

In March and April 2023, LSTC took six depositions of CGMI witnesses, and CGMI took four depositions of LSTC and/or Loomis witnesses.

The Parties have been meeting and conferring regarding LSTC/Loomis’s production of communications with putative absent class members, as well as LSTC/Loomis’s claim of privilege and work product with regard to such communications. LSTC/Loomis have confirmed to CGMI that they completed their production of all such communications and related privilege logs on April 26, 2023. CGMI is determining whether it will pursue the only remaining portion of Loomis’s 30(b)(6) deposition, which the Parties agreed to postpone pending completion of Loomis’s production. CGMI is considering Loomis’s production of communications with absent class members, and CGMI will promptly raise any remaining issues first with LSTC/Loomis and, if unable to reach agreement, then to the Court. Other than discussions regarding Loomis’s production of communications with putative absent class members, document production is complete. Additionally, other than the aforementioned

remaining portion of the Loomis 30(b)(6) deposition, the Parties have completed fact depositions.

B. Procedural History

LSTC filed the class action complaint (the “Complaint”) on August 6, 2022. (Dkt. 1.) On November 16, 2022, CGMI moved to dismiss the Complaint. (Dkt. 34.) LSTC filed its opposition brief on December 9, 2022. CGMI filed its reply brief on December 16, 2022. On February 10, 2023, the Court converted the motion to dismiss to a motion for summary judgment (Dkt. 51.) On February 16, 2023, the Parties filed evidentiary material, including witness and expert declarations, pertinent to the motion, followed by letter briefs on February 17, 2023. The as-converted motion remains pending.²

C. Plans to Ensure Compliance with Discovery Deadlines

As to the Parties’ ongoing discussions regarding communications between Loomis and absent putative class members described above, the Parties do not contemplate that any resulting discovery dispute would impact any upcoming deadlines in the Amended Civil Case Management Plan and Scheduling Order (Dkt. 74) (the “Scheduling Order”). The Parties expect to complete expert discovery by July 21, 2023 in accordance with the Scheduling Order.

D. Settlement

The Parties do not request a referral to alternative dispute resolution at this time.

We appreciate the Court’s consideration of this matter.

² The Parties each filed pre-motion letters for motions that the Court has addressed. On September 26, 2022, CGMI requested a pre-motion conference in connection with an anticipated motion to stay discovery pending resolution of its motion to dismiss. (Dkt. 19.) On October 27, 2022, the Court ordered that CGMI’s stay application was denied. (Dkt. 30.) On October 3, 2022, LSTC requested a pre-motion conference in connection with its anticipated motion for class certification. (Dkt. 24.) On November 3, 2022, the Court ordered that within one week of the Court’s decision on CGMI’s motion to dismiss, the Parties shall file a joint letter proposing a briefing schedule for LSTC’s anticipated motion for class certification, or at such earlier time that LSTC believes that discovery has been completed on class certification issues such that changed circumstances warrant LSTC’s filing of a renewed pre-motion letter. (Dkt. 33.) On March 6, 2023, LSTC requested a pre-motion conference in connection with an anticipated motion for a protective order with respect to the Absent Class Member Subpoenas. (Dkt. 68.) On March 13, 2023, the Court denied LSTC’s application and directed the Parties to meet and confer in good faith regarding any discovery that can be taken from Plaintiff to minimize the burden on third parties. (Dkt. 73.) On March 13, 2023, LSTC requested a pre-motion conference in connection with an anticipated motion to compel CGMI to produce certain communications of its trader Joseph Chiomastro. (Dkt. 75.) On March 21, the Court ordered CGMI to produce the requested communications (Dkt. 82) as described in CGMI’s March 20, 2023 letter (Dkt. 80).

/s/ Matthew C. Baltay

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